

FILED
DISTRICT COURT OF GUAM

MAR 13 2012

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IN THE DISTRICT COURT OF GUAM

DOLORES I. GABRILLO and RUDOLFO GABRILLO,

Plaintiffs,

vs.

**ONWARD BEACH RESORT GUAM, INC.
dba ONWARD BEACH RESORT and
TOKIO MARINE PACIFIC INSURANCE
LIMITED,**

Defendants.

CIVIL CASE NO. CIV.

12-00002

COMPLAINT

INTRODUCTION

1. This is an action for personal injury and loss of consortium brought by plaintiffs for the injuries sustained by plaintiff Dolores Gabrillo as a result of an accident at the premises of the Onward Beach Resort Guam, Inc. doing business as Onward Beach Resort caused by the negligence of defendant Onward Beach Resort in the operation and maintenance of its premises.

JURISDICTION

2. This court has jurisdiction pursuant to the provisions of 28 U.S.C. §1332.

ORIGINAL

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4 **PARTIES**

5 3. Plaintiffs Dolores Gabrillo and Rudolfo Gabrillo are adult
6 individuals, wife and husband and are residents of the State of
7 Hawaii.

8
9 4. On information and belief, defendant Onward Beach Resort Guam,
10 Inc. (hereinafter "Onward") is a Guam corporation duly licensed to
11 do business on Guam and is doing business as Onward Beach Resort.
12

13 5. Defendant Tokio Marine Pacific Insurance Limited (hereinafter
14 "Tokio Marine") is an insurance company licensed to do business on
15 Guam.
16

17 **FACTS**

18 6. At all relevant times herein, the defendant Onward owned,
19 operated and maintained the premises of Onward Beach Resort in
20 Tamuning, Guam.
21

22 7. On September 30, 2010, plaintiff Dolores Gabrillo approached
23 the entrance of Onward as an invitee or patron. As she did, she
24 slipped and fell and sustained serious bodily injuries.
25

26 8. Defendant Onward had a duty to exercise due care in the
27 operation and maintenance of its premises so as not to expose its
28

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4 patrons to an unreasonable risk of harm. At the time and place set
5 forth above, defendant Onward breached this duty in the following
6 ways:

- 7
- 8 a. Defendant did not conduct a regular inspection of its
9 premises to identify possible hazards posed to
10 unsuspecting patrons.
- 11
- 12 b. Defendant did not conduct a regular maintenance cleaning
13 or water blasting of its premises to ensure that the
14 walkway to the entrance had a safe walking surface.
- 15
- 16 c. Defendant knew or in the exercise of reasonable care
17 should have known that the walkway to the entrance had
18 algae and presented an unreasonably slippery walking
19 surface for patrons.
- 20
- 21 d. Defendant did not put any caution signs at or near the
22 area where algae was present on the walkway and where
23 Mrs. Gabrillo fell to warn patrons of the slippery
24 condition of the walkway.
- 25
- 26 e. Defendant did not cordon off the area with a barricade to
27 prevent invitees from walking onto the area where algae
28

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4 was present in the walkway of its premises and which is
5 right at the ingress and egress of the waterpark.

6
7 9. Defendant Onward knew, or in the exercise of reasonable care
8 should have known, of the conditions described above.

9
10 10. As a direct and proximate result of the negligence of
11 defendant Onward as described above, at the time and place set
12 forth above plaintiff Dolores Gabrillo slipped and fell and was
13 seriously injured.

14
15 **FIRST CLAIM - PERSONAL INJURY OF DOLORES GABRILLO**

16 11. Plaintiffs repeat and reallege each and every allegation of
17 paragraphs 1 through 10 of the Complaint herein.

18
19 12. As a direct and proximate result of the negligence of
20 defendant Onward, plaintiff Dolores Gabrillo suffered damages for
21 her injuries including, but not limited to, fractured ribs, which
22 has caused and will continue to cause severe pain and suffering,
23 mental anxiety, inconvenience, physical impairment and loss of
24 enjoyment of life.

25
26 13. As a further direct and proximate result of the negligence of
27 defendant Onward, plaintiff Dolores Gabrillo has incurred and will
28

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4 continue to incur medical and incidental expenses in an amount to
5 be proven at trial.

6
7 14. As a further direct and proximate result of the negligence of
8 defendant Onward, plaintiff Dolores Gabrillo has suffered and will
9 continue to suffer replacement services loss.

10
11 15. As a further direct and proximate result of the negligence of
12 defendant Onward, plaintiff Dolores Gabrillo has lost income and
13 has permanently lost her capacity to earn income in an amount to be
14 proven at trial.

15
16 **SECOND CLAIM - LOSS OF CONSORTIUM OF RUDOLFO GABRILLO**

17 16. Plaintiffs repeat and reallege each and every allegation of
18 paragraphs 1 through 10 and 12 through 15 of the complaint herein.

19
20 17. As a direct and proximate result of the negligence of
21 defendant Onward and the resulting injuries to plaintiff Dolores
22 Gabrillo, plaintiff Rudolfo Gabrillo has been deprived and will
23 continue to be deprived of the society, companionship, consortium
24 and services usually provided by a spouse in good health and of
25 unimpaired vigor and strength.

26
27 / /

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4 **THIRD CLAIM - DEFENDANT TOKIO MARINE**

5 18. Plaintiffs repeat and reallege each and every allegation of
6 paragraphs 1 through 10, 12 through 15 and 17 of the Complaint
7 herein.

8
9 19. At all relevant times herein, defendant Onward was insured by
10 a liability insurance policy issued by defendant Tokio Marine
11 covering liability for claims such as those set forth above. Said
12 insurance policy was in full force and effect at all relevant times
13 herein.

14
15 20. Pursuant to the coverage contained in said insurance policy,
16 and pursuant to 22 GCA §18305, plaintiffs are entitled to maintain
17 a direct action against defendant Tokio Marine upon the terms and
18 limits of the policy and, accordingly, plaintiffs are entitled to
19 recover against Tokio Marine in an amount equal to any judgment
20 recovered against defendant Onward up to applicable policy limits.

21
22 **WHEREFORE,** plaintiffs pray for relief as follows:

23 1. General damages of \$2,000,000.00 for the personal injury
24 of plaintiff Dolores Gabrillo;

25 2. Damages for past, present and future medical care of
26 plaintiff Dolores Gabrillo in an amount to be proven at trial;
27
28

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4 3. For lost income and lost income capacity of plaintiff
5 Dolores Gabrillo in an amount to be proven at trial;

6 4. For loss of consortium of plaintiff Rudolfo Gabrillo in
7 an amount to be proven at trial;

8 5. Costs of suit; and

9 6. Such other relief as the Court may deem just and proper.
10

11 **LAW OFFICE OF ROBERT L. KEOGH**
12 **Attorneys for Plaintiffs**

13
14 DATE:

3/13/12

15 BY:


16 **ROBERT L. KEOGH**
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